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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

This Document Relates to:

*United States of America v. Fiat Chrysler
Automobiles N.V.*, No. 17-CV-11633 (E.D.
Mich.)

MDL 2777 EMC

**FCA DEFENDANTS' THIRD SET OF
REQUESTS FOR THE
PRODUCTION OF DOCUMENTS
TO THE UNITED STATES OF
AMERICA**

The Honorable Edward M. Chen

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of California (the "Local Rules"), any order entered in or applicable to the above-captioned action, or any other applicable law or rule (together, the "Applicable Rules"), Fiat Chrysler Automobiles N.V. ("FCA NV"), FCA US LLC ("FCA US"), V.M. Motori S.p.A. ("VM Italy"), and V.M. North America, Inc. ("VM North America") (collectively, "FCA Defendants") hereby request that the United States of America produce the Documents described below for inspection and copying in accordance with the Definitions and Instructions below.¹

¹ By making these requests, the FCA Defendants do not waive, and expressly preserve, all defenses, including all defenses concerning jurisdiction.

DEFINITIONS

The definitions and rules of construction set forth in Federal Rule of Civil Procedure 34 and Rule 34-1 of the Local Civil Rules for the Northern District of California are hereby incorporated and apply to these requests for the production of Documents. The FCA Defendants reserve the right to serve additional requests for the production of Documents.

1. “Aftermarket Emissions Control Modification Devices” means (a) any parts, components, hardware, or software designed to, advertised to, or the effect of which is to, modify, remove, overwrite, bypass, defeat, delete, render inoperative, or render less effective emissions or engine control software, systems, devices or elements of design installed by the original manufacturer of a vehicle or engine, or (b) any other products advertised to improve the mileage, torque, or horsepower of a vehicle or engine (excluding tires, fluids (such as fuel or oil additives), filters, and aerodynamic parts (such as truck bed caps or covers)). Examples include “Hot Tunes” available from Green Diesel Engineering LLC (http://www.greendieselengineering.com/Engine-Tune/Chrysler-Jeep/Ram/GDE/Ram-1500-EcoDiesel-Hot-Tune/2_37.action and http://www.greendieselengineering.com/Engine-Tune/Chrysler-Jeep/Grand-Cherokee/GDE/Grand-Cherokee-EcoDiesel-%28WK2%29-Hot-Tune-/2_38.action); the “EcoDiesel ECM Tuning” available from Power Performance Enterprises, Inc. (<https://www.ppei.com/shop/ecodiesel-ecm-tuning/>); “Race Pipes” available from Flo~Pro Performance Exhaust (<http://www.flopro.com/ecodiesel.html> and <http://www.flopro.com/ecodieseljeep.html>) and the “Outlaw Diesel EGR Upgrade Kit” available from Dales Billet Sales LLC (d/b/a Dale’s Super Store) (<https://dalessuperstore.com/i-23896337-outlaw-diesel-egr-upgrade-kit-for-2014-2017-dodge-ram-1500-ecodiesel-3-0l.html>).

2. “Concern” or “Concerning” means constituting, pertaining to, making reference to, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, contradicting, discussing, showing, describing, reflecting, analyzing, setting forth, in respect of, having a relationship to, or in any way being factually, legally, or logically connected to, in whole or in part, the stated subject matter.

1 3. “Document” means the original (or, if the information requested cannot be
2 provided as to the original, each and every copy, duplicate, or reproduction) of any medium upon
3 which information can be recorded or retrieved, and includes any written, recorded, or graphic
4 matter, in any language, whether produced or reproduced or stored on paper, cards, tapes, films,
5 computer, electronic storage devices, or any other media and includes papers, trade letters,
6 envelopes, telegrams, cables, messages, correspondence, memoranda, notes, email, text
7 messages, instant messages, reports, studies, press releases, comparisons, books, accounts,
8 checks, audio and video recordings, pleadings, testimony, articles, bulletins, pamphlets,
9 brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, lists, logs,
10 publications, notices, diagrams, instructions, diaries, meeting minutes, orders, resolutions,
11 agendas, and memorials or notes of oral Communications, together with all notations on any of
12 the foregoing, all originals, file copies, or other unique copies of the foregoing and all versions or
13 drafts thereof, whether used or not. A request for all Documents concerning a particular subject
14 matter includes within its scope all Communications concerning that subject matter.

15 4. “EPA” means the United States Environmental Protection Agency and
16 each of its current and former directors, officers, employees, agents, affiliates, representatives,
17 and any other person acting on their behalf.

18 5. “Including” or “includes” means including without limitation or includes
19 without limitation.

20 6. “Light-Duty Diesel Vehicle” means a Light-Duty Vehicle (as defined
21 below) with a diesel engine.

22 7. “Light-Duty Diesel Aftermarket Emissions Control Modification Devices”
23 means Aftermarket Emissions Control Modification Devices (as defined above) designed, sold,
24 or purchased for use or installation in Light-Duty Diesel Vehicles (as defined above), including
25 the Subject Vehicles (as defined below).

26 8. “Light-Duty Vehicle” has the meaning ascribed to it in 40 C.F.R.
27 § 86.1803-01.
28

9. “Subject Vehicles” means the vehicles identified by EPA Test Groups ECRXT03.05PV, FCRXT03.05PV, and GCRXT03.05PV.

10. “You” and “Your” mean the United States, its agents and affiliates, and those on whose behalf it is acting, including the EPA.

INSTRUCTIONS

1. Unless otherwise specified, the responsive period for each document request is from January 1, 2013, through the date of these requests.

2. Please respond separately to each request and produce all Documents in Your possession, custody, or control, regardless of location.

3. Documents shall be produced and Bates numbered in a manner that ensures that the source of each Document may be determined.

4. These requests are continuing and You must amend or supplement Your responses and productions as required under applicable law.

5. For the purpose of construing the scope of these requests, the terms used shall be given their most expansive and inclusive interpretation.

6. Unless instructed otherwise, each request shall be construed independently and not by reference to any other request for the purpose of limitation or exclusion.

7. You must answer each request separately and fully, unless it is objected to, in which event the objection(s) should be specifically stated.

8. You must produce responsive Documents as they have been kept in the usual course of business or shall organize or label them to correspond to the enumerated requests herein.

9. If You claim any ambiguity in interpreting either a request or a definition or instruction, You should not use that claim as a basis for refusing to respond, but shall set forth as part of Your response the language deemed to be ambiguous.

10. If You have no Documents responsive to a request, You must say so in Your response.

11. Each Document requested herein is to be produced in its entirety and without deletion or excisions, regardless of whether You consider the entire Document to be relevant or responsive.

12. If You withhold any Document, or any portion of any Document, under any claim of privilege, immunity, or protection, You shall provide a written privilege log that sets forth the information required under the terms of Pretrial Order No. 13: Stipulation Relating to Non-Waiver of Privileges and Production of Privilege Logs (ECF No. 246).

13. To bring within the scope of these requests all information that might otherwise be construed to be outside of their scope, (a) the present tense shall be construed to include the past tense and vice versa, (b) the singular includes the plural and vice versa, and (c) the terms “and” and “or” are both conjunctive and disjunctive.

14. These requests shall not be construed as a waiver or abridgment of, and are not intended to waive, any argument or defense or any objection to any of Your discovery requests, nor shall they be construed as an admission of any fact.

15. Your Electronically Stored Information (“ESI”) protocol and procedures shall comply with Pretrial Order No. 16: Stipulation and Order Governing the Production of Hard Copy Documents and Electronically Stored Information (ECF No. 256).

REQUESTS FOR PRODUCTION

1. Documents sufficient to show the number of Light-Duty Diesel Aftermarket Emissions Control Modification Devices (a) sold in the United States; (b) installed in vehicles in the United States, (c) sold to owners of Subject Vehicles, and (d) installed in Subject Vehicles.

2. Documents sufficient to show the purposes and functions of Light-Duty Diesel Aftermarket Emissions Control Modification Devices.

3. Documents sufficient to show the effects that Light-Duty Diesel Aftermarket Emissions Control Modification Devices have on (a) vehicle emissions, including but not limited to NOx, CO₂, and particulate matter emissions, and (b) emissions control systems.

4. Documents sufficient to show EPA's policies and guidance concerning, and views about the potential legality or illegality of, the installation or use of Light-Duty Diesel Aftermarket Emissions Control Modification Devices.

1 5. Documents sufficient to show the identities of any persons involved in the
2 sale, marketing, or manufacturing of any Light-Duty Diesel Aftermarket Emissions Control
3 Modification Device.

4 Dated: November 16, 2018

/s/ Robert J. Giuffra, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document is being served by electronic mail to the designated counsel of record in the above-captioned action on this 16th day of November, 2018.

/s/ Thomas C. White
Thomas C. White